



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 10, 1998

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0665

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113586.

The City of Houston (the "city") received a request for all information "concerning the Neighborhood Traffic Project for Garden Oaks, Section 1A." You explain that you have released most of the requested information to the requestor. You claim, however, that eight responsive pages are excepted from required public disclosure by sections 552.103, 52.107 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990)

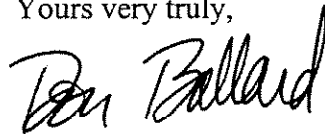
at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You claim that litigation is reasonably anticipated because the city is "the subject of an on-going investigation by the Southwest Office of Fair Housing and Urban Development" ("HUD"). You state that the city has not made the submitted information available to HUD or any other party outside the city. You have submitted an affidavit from the attorney representing the city. The affidavit explains that "litigation is a remedy provided for in the controlling federal law." Based on the submitted materials and our past rulings on this matter, we conclude that litigation is reasonably anticipated and that the requested information relates to that litigation. Open Records Letter Nos. 97-0731 (1997), 97-0051 (1997), 96-1798 (1996). You may withhold the submitted information from public disclosure.¹

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed if not otherwise confidential by law. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 113586

¹Because we make a determination under section 552.103, we need not address your additional arguments against disclosure at this time.

Enclosures: Submitted documents

cc: Mr. Alex Martinez
419 West 31st Street
Houston, Texas 77018
(w/o enclosures)